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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of )  
 )  
10-2002 LLC f/k/a Suncoast Ford<sup>1</sup> )  
Gary J. Scarbrough )  
Sarasota 500, LLC d/b/a Sarasota Ford )  
Buchanan Automotive Holdings )

MUR 6054

GENERAL COUNSEL'S REPORT #10

I. ACTIONS RECOMMENDED: (1) Find reason to believe that 10-2002 LLC f/k/a Suncoast Ford violated 2 U.S.C. §§ 441f and 441a(a); (2) find reason to believe that Gary J. Scarbrough violated 2 U.S.C. § 441f; (3) find no reason to believe that Sarasota 500, LLC d/b/a Sarasota Ford or Buchanan Automotive Holdings violated 2 U.S.C. § 441f and close the file as to these respondents; (4) approve the attached Factual and Legal Analyses; (5) ; and (6) approve the appropriate letters.

II. BACKGROUND

This matter concerns campaign contributions received by Vern Buchanan for Congress ("VBFC" or "Committee") during the 2006 and 2008 election cycles that were reimbursed with the funds of car dealerships in which Representative Vernon Buchanan ("Buchanan") holds, or previously held, a majority ownership interest. This Report concerns the reimbursement of \$18,400 in contributions to VBFC by 10-2002 LLC f/k/a Suncoast Ford ("Suncoast Ford") and the operating partner at Suncoast Ford, Gary J. Scarbrough, in violation of 2 U.S.C. § 441f.

In General Counsel's Report #5 ("GCR #5") in this matter, we informed the Commission that there was evidence that, in 2007, Suncoast Ford and Scarbrough reimbursed \$18,400 in contributions to VBFC made by Scarbrough and three other Suncoast Ford employees. Based on

<sup>1</sup> 10-2002 LLC recently filed a document with the Florida Secretary of State that canceled its use of "Suncoast Ford" as the name of its business.

1 this evidence, which is described in greater detail below, we recommend that the Commission  
2 find reason to believe that 10-2002 LLC f/k/a Suncoast Ford violated 2 U.S.C. §§ 441f and  
3 441a(a), and that Gary J. Scarbrough violated 2 U.S.C. § 441f.

4 Additionally, we  
5 recommend that the Commission find no reason to believe that Sarasota 500, LLC d/b/a Sarasota  
6 Ford or Buchanan Automotive Holdings violated 2 U.S.C. § 441f and close the file as to these  
7 respondents identified in the MUR 6054 complaint.

8 **III. ANALYSIS**

9 **A. CONTRIBUTIONS IN THE NAME OF ANOTHER**

10  
11 There is evidence that Scarbrough directed the Suncoast Ford controller to reimburse  
12 contributions to VBFC, including Scarbrough's, using dealership funds. The Federal Election  
13 Campaign Act of 1971, as amended ("Act"), provides that no person shall make a contribution in  
14 the name of another person or knowingly permit his or her name to be used to effect such a  
15 contribution. 2 U.S.C. § 441f. Section 441f prohibits providing money to others to effect  
16 contributions in their names without disclosing the source of the money to the recipient candidate  
17 or committee at the time the contribution is made, and it applies to individuals as well as  
18 incorporated or unincorporated entities. 11 C.F.R. § 110.4(b)(2); 2 U.S.C. § 431(11) (term  
19 "person" includes partnerships and corporations). This prohibition also applies to any person  
20 knowingly helping or assisting any person in making a contribution in the name of another,  
21 including "those who initiate or instigate or have some significant participation in a plan or  
22 scheme to make a contribution in the name of another[.]" 11 C.F.R. § 110.4(b)(1)(iii);  
23 Explanation and Justification for 11 C.F.R. § 110.4(b)(1)(iii) at 54 Fed. Reg. 34,105 (1989).

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1           The evidence that Scarbrough and Suncoast Ford made contributions in the names of  
2 others includes the sworn affidavit of Kenneth Lybarger, who was the controller at Suncoast  
3 Ford at the time of the contributions and one of the alleged conduits. Lybarger stated in his  
4 affidavit that, at Scarbrough's direction, he wrote a personal contribution check to VBFC and  
5 issued reimbursement checks from Suncoast Ford's account to Scarbrough, Harold H. ("Sonny")  
6 Glover, III, M. Osman ("Ozzie") Ally, and himself. Lybarger Aff. at ¶ 4-5. VBFC disclosed that  
7 Scarbrough, Glover, Ally, and Lybarger each contributed \$4,600 in March of 2007. According  
8 to Lybarger, the entries in Suncoast Ford's ledger for the reimbursements were subsequently  
9 questioned by Ed Schmid, an assistant corporate controller of the Buchanan Automotive Group  
10 ("BAG"). Lybarger Aff. at ¶ 6. Lybarger explained to Schmid that he was directed to reimburse  
11 the contributions. *Id.* On June 18, 2007, VBFC refunded all \$18,400 of the reimbursed Suncoast  
12 Ford employee contributions. *See* GCR #5 at 25-26; Deposition Tr. of VBFC treasurer Joseph  
13 Gruters at 55, 68, 92; Email from Ron Turner to Celena Thibodeaux re: "2007 Returned  
14 Contributions" dated August 11, 2008 (produced by Vernon Buchanan at VGB 006).<sup>2</sup> When  
15 Lybarger received the refund from VBFC, he wrote a personal check repaying Suncoast Ford for  
16 the reimbursement. Lybarger Aff. at ¶ 7.

17           Ed Schmid stated in an interview that in the course of his work for BAG, he reviewed the  
18 books of SunCoast Ford and noticed several unusual disbursements to employees, and either  
19 Lybarger or Scarbrough told him that the disbursements were reimbursements for contributions  
20 to VBFC. Schmid notified one of his superiors at BAG of what he had found, and Schmid stated

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<sup>2</sup> Ron Turner was Buchanan's campaign manager for the 2006 election campaign and, after Buchanan was sworn into Congress in January 2007, Turner was Buchanan's district director. Buchanan Deposition Tr. at 120-121. Celena Thibodeaux was Buchanan's executive assistant and his campaign's finance director. *Id.* at 47-48.

1 that he was aware that the SunCoast Ford employees' contributions to VBFC were eventually  
2 refunded.

3 Scarbrough testified in a deposition that Buchanan asked him "a few times" to contribute  
4 to VBFC, Scarbrough Deposition Tr. at 13, but that he did not remember whether Buchanan also  
5 asked him to solicit Suncoast Ford employees to contribute to VBFC. *Id.* at 15. Scarbrough also  
6 testified that he did not remember if he asked his employees to contribute to VBFC, but he "may  
7 have" done so. *Id.* at 16, 19. Scarbrough admitted that he "had some checks cut back to some  
8 people for their contributions to Vern's campaign, and shortly after that, we found out that we  
9 couldn't do that." *Id.* at 31. Scarbrough also testified that he "probably" asked someone to write  
10 the checks, and the purpose of issuing the Suncoast Ford checks to the contributors was "[t]o  
11 refund the money that they had contributed to the campaign." *Id.* Scarbrough testified that he  
12 intended to repay Suncoast Ford for its reimbursement of his contribution to VBFC but had not  
13 done so before his contribution was refunded. *Id.* at 36. After the contributions and  
14 reimbursements were made, a person from Buchanan's business organization named "Ed," who  
15 periodically reviewed Suncoast Ford's accounting, informed Scarbrough that he could not  
16 reimburse contributions and that the contributions had to be refunded. *Id.* at 28, 32.

17 Scarbrough testified that he did not remember: (a) whose idea it was to reimburse  
18 Suncoast Ford employee contributions to VBFC; (b) whether he did it of his own accord; or  
19 (c) whether someone asked him to have his employees' contributions reimbursed. *Id.* at 33, 39.

20 In nearly identical responses to our February 14, 2011, notification letters, Scarbrough  
21 and Suncoast Ford each stated that they "discovered a mistake was made when the contributions  
22 ... were reimbursed" and that "[u]pon learning of the mistake, VBFC was notified and [VBFC]  
23 took immediate corrective action by refunding the contributions to each individual" within three

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1 months of the reimbursement of the contributions and before the FEC's involvement.

2 Scarbrough Response at 1; Suncoast Ford Response at 1. The Responses, therefore, do not  
3 appear to contest the allegation set forth in the notification letters, which allegation was restated  
4 in both of the responses, that Scarbrough directed Lybarger to reimburse the contributions using  
5 Suncoast Ford funds. *See* Scarbrough Response at 1; Suncoast Ford Response at 1:

6 Consequently, based on the sworn accounts of Lybarger and Scarbrough, and the  
7 Responses, we recommend that the Commission find reason to believe that 10-2002 LLC f/k/a  
8 Suncoast Ford made contributions totaling \$18,400 in the names of Gary J. Scarbrough, Kenneth  
9 Lybarger, Harold H. Glover, III, and M. Oaman Ally in violation of 2 U.S.C. § 441f. Because  
10 Scarbrough, who was the operating partner at Suncoast Ford, knowingly permitted his name to  
11 be used to effect a contribution in the name of another, and assisted Suncoast Ford in making  
12 \$18,400 in contributions in the names of others by directing his subordinate, Lybarger, to issue  
13 checks from a Suncoast account to reimburse the contributions, we recommend that the  
14 Commission find reason to believe that Gary J. Scarbrough violated 2 U.S.C. § 441f.

15 The Commission has found reason to believe as to conduits that actively participated in  
16 the reimbursement scheme and recruited others to participate. *See* MUR 5871 (Noe); *see also*  
17 MUR 5666 (MZM) (RTB as to reimbursed managers who also created or encouraged employees  
18 to participate in the scheme). Consistent with prior Commission decisions, we are making no  
19 recommendations with respect to Lybarger and the other conduits, who appear to be  
20 subordinates. *See* MUR 5871 (Noe); MUR 5666 (MZM).

21 The Act addresses violations of law that are knowing and willful. *See* 2 U.S.C.  
22 §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is  
23 violating the law. *Federal Election Commission v. John A. Damesi for Congress Committee,*

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640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup> Cir. 1990). Evidence does not have to show that the defendant had a specific knowledge of the regulations; an inference of a knowing and willful act may be drawn from the defendant's scheme to disguise the source of funds used in illegal activities. *Id.* at 213-15.

In view of the circumstances that we know the full scope of the violation; that Scarbrough said that the reimbursements were a "mistake," and we have little other evidence that Respondents' violations were knowing and willful; and that the Commission made probable cause to believe findings as to Sam Kazran and 11-2001 LLC d/b/a Hyundai of North Jacksonville, who are similarly-situated respondents, on a non-knowing and willful basis, investigating Scarbrough's state of mind in this matter would not be an efficient use of Commission resources.

#### **B. EXCESSIVE CONTRIBUTION**

In the 2008 election cycle, the individual contribution limit for giving to candidate committees was \$2,300 per election. *See* 2 U.S.C. § 441a(a)(1)(A). The contributions of a partnership are attributed to both the partners and the partnership itself, that is, the partnership itself is subject to the contribution limit in effect at the time for individuals. *See* 11 C.F.R. § 110.1(e). Accordingly, a partnership that reimbursed contributions totaling more than \$2,300 per election in the 2008 cycle would also have made an excessive contribution in violation of 2 U.S.C. § 441a(a). Because Suncoast Ford is taxed as a partnership and, acting through

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1 Scarbrough, reimbursed \$18,400 in contributions by Scarbrough and its employees to VBFC  
2 during the 2008 election cycle, we recommend that the Commission find reason to believe that  
3 10-2002 LLC f/k/a Suncoast Ford violated 2 U.S.C. § 441a(a) by contributing more than \$2,300  
4 per election in 2007 to VBFC.

5 **C. SARASOTA FORD AND BUCHANAN AUTOMOTIVE HOLDINGS**

6 The MUR 6054 Complaint alleged that campaign contributions were reimbursed at  
7 Sarasota 500, LLC d/b/a Sarasota Ford, another car dealership in which Buchanan holds, or  
8 previously held, a majority ownership interest. The Complaint also alleged that Buchanan  
9 Automotive Holdings, Inc. ("BAH"), which is solely-owned by Vernon Buchanan and is the  
10 managing member of Florida limited liability companies that operate car dealerships, including  
11 Sarasota Ford, participated in the reimbursement of contributions. On the basis of the MUR  
12 6054 First General Counsel's Report, the Commission took no action as to Sarasota Ford or  
13 BAH. See FGCR at 16-17; Commission Certification dated June 23, 2009. The investigation as  
14 to other respondents in MUR 6054 has not produced evidence to conclude that there is reason to  
15 believe that either of these entities violated the Act. Although there was testimony indicating  
16 that employees of Sarasota Ford were offered cash reimbursements for their contributions, there  
17 is no evidence that Sarasota Ford reimbursed any disclosed contributions to VBFC. As for BAH,  
18 there is no evidence that BAH was the source of any reimbursements of contributions to VBFC.  
19 Accordingly, we recommend that the Commission find no reason to believe that Sarasota 500,  
20 LLC d/b/a Sarasota Ford or Buchanan Automotive Holdings, Inc. violated 2 U.S.C. § 441f and  
21 close the file as to these respondents.

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16 **V. RECOMMENDATIONS**

- 17 1. Find reason to believe that 10-2002 LLC f/k/a Suncoast Ford violated 2 U.S.C.  
18 § 441f;
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2. Find reason to believe that 10-2002 LLC f/k/a Suncoast Ford violated 2 U.S.C. § 441a(a);
3. Find reason to believe that Gary J. Scarbrough violated 2 U.S.C. § 441f;
- 4.
5. Find no reason to believe that Sarasota 500, LLC d/b/a Sarasota Ford violated 2 U.S.C. § 441f and close the file as to this respondent;
6. Find no reason to believe that Buchanan Automotive Holdings, Inc. violated 2 U.S.C. § 441f and close the file as to this respondent;
7. Approve the attached Factual and Legal Analyses;
8. Approve the appropriate letters.

Christopher Hughey  
Acting General Counsel

Date: 4/29/11

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